

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Coshelmu LLC dba Zinga Yogurt

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay

Employer: Coshelmu LLC dba Zinga Yogurt, 380 Lafayette Rd., B#2, Unit
#203, Seabrook, NH 03874

Date of Hearing: September 10, 2014

Case No.: 48389

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$399.85 in unpaid vacation pay due upon his separation. He argues he signed an agreement that granted two weeks of vacation pay upon hire. No mention was made of the vacation pay needing to be accrued over the course of a year.

At the hearing, he clarified that the gross amount is \$480.00 for three days of vacation and the \$399.85 is a net amount.

The employer argues the claimant only worked six months, therefore, he is only due one week of vacation pay. She paid the claimant for seven of his ten days of vacation pay, more than the amount he had accrued. She also paid him three days of severance.

FINDINGS OF FACT

The claimant worked for the employer from January 6, 2014 through June 23, 2014. He received a weekly salary of \$800.00.

He signed an agreement with the employer on December 15, 2013, which stated, in relevant part, "Vacation: 2 weeks per year."

The employer paid the claimant for seven vacation days. She also paid three days of severance upon termination.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay. Lab 803.03 (b) requires employers to

provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275:49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer notified the claimant that he would receive two weeks of vacation pay per year. She did not notify the claimant as to how the vacation pay is handled upon separation from the employer.

The employer has the freedom to decide if and how vacation pay is given, and how it is treated upon an employee's separation from employment. The only requirement of the statute is that the policy is reduced to writing.

The employer failed to notify the claimant, in writing, that the vacation pay is accrued, not granted, as the written agreement would indicate.

The Hearing Officer finds the employer failed to properly notify the claimant as to the policy and practice as it pertains to vacation pay, in writing.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he was not paid all vacation pay due under the written policy of the employer.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that he is due the claimed vacation pay, it is hereby ruled that the Wage Claim is valid in the amount of \$480.00 (\$160.00 * 3 days).

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$480, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: September 16, 2014

Original: [REDACTED]
cc: Coshelmu LLC dba Zinga Yogurt

MJD/klt

